

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

75-1404

To be argued by
SHEILA GINSBERG

B
p/s

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

JEROME STERNLIEB,

Appellant.

Docket No. 75-1404

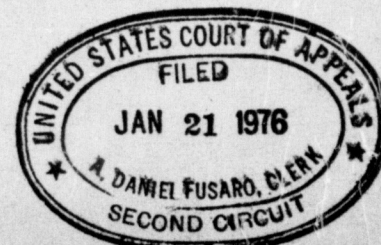
APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
JEROME STERNLIEB

FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

SHEILA GINSBERG,
Of Counsel.



PAGINATION AS IN ORIGINAL COPY

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE WARD

75 CRIM. 367.

D. C. Form No. 100 Rev.

TITLE OF CASE

THE UNITED STATES

vs.

JEROME STERNLIEB

ATTORNEYS

For U. S.:

Lawrence B. Pedowitz, AUSA.
791-1917

For Defendant:

(05) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation	Docket fee				
Title 18					
Sec. 1343					
Wire fraud.					
(One Count)					

DATE

PROCEEDINGS

4-11-75	Filed indictment.
4-15-75	Deft. (atty. present) Pleads not guilty. Motions returnable in 10 days. Bail fixed by Mag. at \$2,500. cash or surety continued without prejudice. Deft. continued remanded in lieu of bail. Case assigned to Judge Ward for all purposes. Bonsal, J.
4-21-75	Marked Off.....Pierce, J.
9-23-75	Deft. pleads guilty to indictment. Bail continued. Pre-sentence investigation ordered. Sentence date 12-5-75 at 2:15 P.M.....Ward, J.
12-05-75	Filed Judgment and Commitment Order - The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of FIVE (5) YEARS--WARD, J.
12-08-75	Filed Deft's Notice of Appeal to the U.S.C.A. for the 2nd Circuit from the sentence of 12-05-75. Leave to file in forma pauperis approved--WARD, J. Copy served on the U.S. Atty and mailed copy to Deft at M.C.C., 150 Park Row, NYC.

CRIMINAL DOCKET
UNITED STATES DISTRICT CO.

JUDGE WARD

75 CONT. 789.

D. C. Form No. 100 Rev.

[illegible]

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation	Docket fee				
Title 18					
Sec. 1342					
Wire fraud					
(One Count)					

UNITED STATES COURT OF APPEALS
FILED
DEC 29 1975
DANIEL FUSARO, CLERK
SECOND CIRCUIT

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CLERK
By *[Signature]*
Deputy Clerk

DATE	PROCEEDINGS
6-75	Filed indictment and consent to transfer for plea and sentence pursuant to Rule 20, received from the District of Nevada. Also orig. JS-3 Mag. warrant of arrest, minutes of the court, Mag.'s complaint.
9-23-75	Deft. pleads guilty to indictment. (See 75 Cr. 367 re: bail). Pre-sentence investigation ordered. Sentence date 12-5-75 at 2:15 P.M.Ward, J.
12-05-75	Filed Judgment (#75,954) and Commitment Order- The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of FIVE (5) YEARS and FINED \$1,000.00. Execution of prison sentence is suspended. Deft is placed on Probation for a period of FIVE (5) YEARS, the term of which shall run consecutive to those State sentences heretofore imposed. The Deft is ordered to stand committed until Fine is paid or he is otherwise discharged by due course of law--WARD.
12-08-75	Filed Deft's Motion of Appeal to the USCA for the 2nd Circuit from the sentence of 12-05-75. Leave to file in forma pauperis approved--WARD, J. Copy served on US Atty and mailed copy to Deft at M.C.C. 150 Park Row, NYC.

LP:mr

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75 CRIM. 387

-----x
UNITED STATES OF AMERICA, :

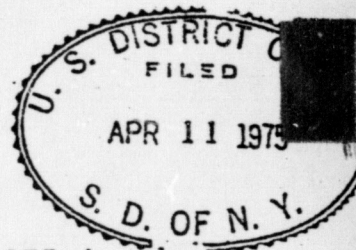
-v- :

INDICTMENT

JEROME STERNLIEB, :

75 Cr.

Defendant. :
-----x



The Grand Jury charges:

On or about the 28th day of March, 1975 in the Southern District of New York, JEROME STERNLIEB, the defendant, unlawfully, wilfully and knowingly having devised a scheme for obtaining money and property by means of false and fraudulent pretenses, representations and promises, caused to be transmitted, by means of wire communication in interstate commerce, writings, signs, signals and sounds for the purpose of executing such scheme.

(Title 18, United States Code, Section 1343).

Irving J. Paul
Foreman

Paul J. Curran
PAUL J. CURRAN
United States Attorney

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

JEROME STERNLIEB,

Defendant,

INDICTMENT

In violation of Title 18,
U.S.C., Section 1343

PAUL J. CURRAN

United States Attorney.

TRUE BILL

Henry J. Allen
Foreman.

FPI-SS-2-19-71-20M-6950

4-15-75

Left Newark at 9:00 AM for New York

Left Newark at 11:00 AM for New York

Left Newark at 1:00 PM for New York

Left Newark at 3:00 PM for New York

Left Newark at 5:00 PM for New York

AP

Stewart J.

4-21-75 - meet. app.

Forrest

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SEP 23 1975

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Left Newark at 5:00 PM for New York

Hand. J.

DEC 5 - 1975

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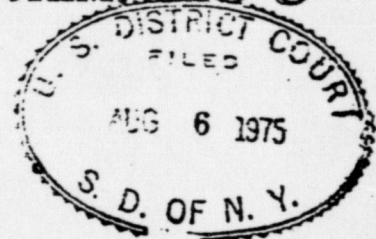
Hand. J.

U. S. DISTRICT COURT
DISTRICT OF NEVADA
FILED

APR 10 1975

JOHN A. POWERS, CLERK
BY COURT REPORTER

75 CRIM 789



UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEROME STERNLIEB,

Defendant.

Cr. LV 75-74, RDF

INDICTMENT for Violation of
Title 18, United States Code,
Section 1343
(Fraud by Wire)

THE GRAND JURY CHARGES:

1. That during the period from on or about the 2nd day of April, 1975, to on or about the 5th day of April, 1975, in the State and Federal Judicial District of Nevada, and elsewhere, JEROME STERNLIEB, devised and intended to devise a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, promises and representations from the Bank of Nevada, Main Branch, Las Vegas, Nevada, well knowing at the time that the pretenses, promises and representations would be and were false when made, the scheme and artifice so devised and intended to be devised being in substance as follows:

1 2. It was a part of the scheme and artifice to defraud
2 that on or about the 3rd day of April, 1975, a telephone call was
3 received by Tom Stevens, Operations Officer, Main Branch, Bank
4 of Nevada, at the Bank of Nevada. The caller identified himself
5 as Steve Hyde of Caesar's Palace Hotel, Mr. Steve Hyde actually
6 being the Comptroller at Caesar's Palace Hotel, Las Vegas,
7 Nevada. The caller accurately provided the Caesar's Palace
8 Hotel's checking account number, that being number 051-064-780,
9 and requested that \$1,000 be sent by wire to JEROME STERNLIEB, in
10 care of Irving Trust Company, 86th and Lexington, Manhattan, New
11 York, and requested that the \$1,000 be charged to the Caesar's
12 Palace Hotel checking account number 051-064-780. As a method
13 of identification, the caller told Tom Stevens to inform the
14 Irving Trust Company that JEROME STERNLIEB would appear at the
15 Irving Trust Company, 86th and Lexington, Manhattan, New York,
16 and properly identify himself, and would use the code that he
17 was William Weinberger's nephew. William Weinberger is the
18 President of Caesar's Palace Hotel, Las Vegas, Nevada. The
19 caller, supposedly Steve Hyde of Caesar's Palace Hotel, then
20 inquired as to the time the \$1,000 would be available at the
21 Irving Trust Company in New York, and was told that the \$1,000
22 would be available after 3:00 P.M., on April 4, 1975.

23 3. It was a further part of the scheme and artifice
24 to defraud that on or about the 4th day of April, 1975, JEROME
25 STERNLIEB did cause a wire communication to be made, via Telex,
26 between the Bank of Nevada in Las Vegas, Nevada, and the First
27 National City Bank of New York, in New York, New York, that bank
28 being the correspondant Bank of the Bank of Nevada, Las Vegas,
29 Nevada, for the purpose of arranging \$1,000 to be provided to
30 JEROME STERNLIEB by the Irving Trust Company and charged to the
31 Bank of Nevada.
32

1 4. It was a further part of the scheme and artifice
2 to defraud that on or about the 4th day of April, 1975, due to the
3 wire communication, via Telex, between the Bank of Nevada, Las
4 Vegas, Nevada, and the First National City Bank of New York, in
5 New York, New York, the Irving Trust Company of Manhattan, New
6 York, made available a \$1,000 check to be picked up by JEROME
7 STERNLIEB, the said \$1,000 check to be ultimately charged to the
8 account of the Caesar's Palace Hotel at the Bank of Nevada,
9 in Las Vegas, Nevada.

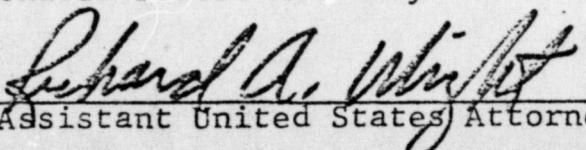
10 5. It was a further part of the scheme and artifice
11 to defraud that on or about the 4th or 5th day of April, 1975,
12 JEROME STERNLIEB would and did appear at the Irving Trust Company
13 in Manhattan, New York, and identify himself as JEROME STERNLIEB,
14 the nephew of William Weinberger, and would receive from the
15 Irving Trust Company a check for \$1,000.

16 6. On or about the 4th day of April, 1975, in the
17 State and Federal Judicial District of Nevada, and elsewhere,
18 JEROME STERNLIEB, for the purpose of executing the scheme and
19 artifice to defraud and attempting to do so, did transmit and
20 cause to be transmitted in interstate commerce by means of a
21 wire communication, that is, a Telex, between the Bank of Nevada
22 in Las Vegas, Nevada, and the First National City Bank of New
23 York, New York, New York, certain signs, signals, and sounds; all
24 in violation of Title 18, United States Code, Section 1343.

25 A TRUE BILL:

26 
27 FOREMAN OF THE GRAND JURY

28 LAWRENCE J. SEMENZA
29 United States Attorney

30 
31 Assistant United States Attorney
32

NIM. 789

JUDGE WARD

SEP 23 1975

Deft. pleads guilty to indictment,
(Sec 75 Cr. 367 re bail)
P.S.D. ordered sentence
date 12/5 at 2:15 P.M.
Ward, J.

DEC 5 - 1975

Deft. w/a/p sentenced to 5 yrs. +
fined \$1,000.00. E.S.S. and deft
placed in probation of 5 yrs
the term of which shall run
consecutively to those State
sentences heretofore imposed. Deft.
fine is a committed fine until
fine is paid
Ward, J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

UNITED STATES OF AMERICA :

- against - : 75 Crim. 789

JEROME STERNLIEB, :

Defendant. :

- - - - -x

B e f o r e :

HONORABLE ROBERT J. WARD,
District Judge.

New York, New York
September 23, 1975 - 4:30 p.m..

A p p e a r a n c e s :

THOMAS J. CAHILL, Esq.
United States Attorney for the
Southern District of New York
BY: LAWRENCE PEDOWITZ, Esq.
Assistant United States Attorney

JOHN GUTMAN, Esq.
Attorney for Defendant

1 THE COURT: Miss Kruger, would you call the
2
3 case which was set down for 4:00 p.m.?

4 THE CLERK: United States of America v. Jerome
5 Sternlieb. Is the government ready?

6 MR. PEDOWITZ: Ready for the government.

7 THE CLERK: Is the defendant ready?

8 MR. GUTMAN: Ready for the defendant. My name
9 is John Gutman of the Federal Defenders Service. Mr. Stern-
10 lieb is present.

11 THE COURT: The Court notes that Mr. Sternlieb
12 is present accompanied by Mr. Gutman.

13 Is there an application, Mr. Gutman?

14 MR. GUTMAN: Yes. At this time the defendant
15 would enter a plea of guilty to the Southern District charge
16 of fraud by wire and the Rule 20 charge from the District
17 of Nevada outlining the same charge.

18 THE COURT: We will be referring to the Southern
19 District charges in indictment 75 Criminal 367, and the
20 District of Nevada charges bearing the Southern District
21 number 75 Criminal 789.

22 The Southern District charge is contained, as
23 I have it here, in a one-count indictment. The District of
24 Nevada charge is set forth in what I perceive on examination
25 to be also a one-count indictment, but it is subdivided into

2 six paragraphs. Is that correct?

3 MR. GUTMAN: That is correct.

4 THE COURT: Mr. Gutman, as you know, it is my
5 practice when there is an offer to enter a plea of guilty to
6 interrogate the defendant.

7 MR. GUTMAN: Yes, it is.

8 THE COURT: I will do that at this time.

9 MR. GUTMAN: Fine.

10 BY THE COURT:

11 Q Would you state your full name, your permanent
12 home address, your age and your occupation?

13 A Yes, sir. Jerome Sternlieb, 37-21 80th Street,
14 Jackson Heights. Forty-one years of age.

15 Q Finally, your occupation.

16 A I was a sales manager in the motion picture
17 industry.

18 Q Lastly in that area, would you tell me how far
19 you went in school.

20 A Yes, sir, thirteen years.

21 Q Mr. Sternlieb, it has been indicated that you
22 are prepared to plead guilty to two one-count indictments.
23 Do you understand that you are entitled to a trial by jury
24 on the charges contained in these two indictments, if you
25 wish to?

2 A Yes, sir.

3 Q Do you understand that if I accept your offer
4 to plead guilty to each of these indictments this afternoon
5 you will not have a trial?

6 A Yes, sir.

7 Q You understand that if I accept your offer to
8 plead guilty, I might send you to jail?

9 A Yes, sir.

10 Q You understand that if I see fit I might sentence
11 you to jail for a maximum term -- Mr. Pedowitz, am I correct? --
12 of five years and/or a fine of \$1,000?

13 MR. PEDOWITZ: Correct, your Honor, on each
14 indictment.

15 THE COURT: Do they set forth the same crime,
16 in other words, the same criminal acts alleged?

17 MR. PEDOWITZ: No, your Honor, there would be
18 two separate indictments in the government's view, two
19 separate crimes.

20 THE COURT: So by your theory at least
21 theoretically I could sentence the defendant to a total of
22 ten years and a \$2,000 fine?

23 MR. PEDOWITZ: Yes, your Honor, if you made it
24 a second sentence.

25 MR. GUTMAN: Your Honor, I believe that the

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2 Nevada indictment sets the dates of April 4 or 3 or 5,
3 somewhere around there, if I'm not mistaken.

4 THE COURT: Yes, it speaks about from on or
5 about the 2nd of April to on or about the 5th of April.

6 MR. GUTMAN: And the New York indictment speaks
7 of the 28th of March, I think.

8 THE COURT: On or about.

9 MR. GUTMAN: I think the two dates are so close
10 in proximity and I think it was generally conceived of as
11 one transaction, so to speak, but broken up into different
12 dates, since they both involved the same bank, if I'm not
13 mistaken, since in New York the charge is that he received
14 the money and in Nevada he started, so to speak, the
15 transaction. I would maintain that it is not a consecutive,
16 two separate transactions.

17 THE COURT: Let me say this, to cut through the
18 whole matter: If I determine that they are separate I am
19 telling you now that I will sentence concurrently. Does
20 that satisfy everyone?

21 MR. GUTMAN: Yes, sir.

22 THE COURT: So, basically, whether I would give
23 you a total ten-year sentence, at least in theory I am telling
24 you now that I would sentence you to a maximum term of five
25 years on each count to run concurrently plus a fine of \$1,000.

2 MR. PEDOWITZ: I think I ought to state the
3 government's position. There are separate wirings of money,
4 one in the Southern District case and one in the Las Vegas
5 case. It is my understanding that under the Wire Fraud
6 Act each separate wiring is a separate crime, much the same
7 as the mail fraud statute.

8 THE COURT: I don't disagree, but I am trying to
9 take what I think is the practical approach in the context
10 of this case. I'm assuming for the moment that you are
11 correct, but in the context of this case, as I understand it,
12 with all of its ramifications, I would suggest that rather
13 than complicate the issue I am saying now that if there were
14 two separate crimes I would consider that the sentences
15 should be imposed concurrently.

16 MR. PEDOWITZ: I understand and concur with that.

17 I want it clear from the government's point of
18 view the defendant is pleading guilty to two crimes. If at
19 some future time he should feel that his plea was only to
20 one crime -- he might suffer some detriment as a result of
21 having two convictions and it should be clear from the
22 government and also from the defendant that he is pleading
23 guilty to the two separate criminal offenses.

24 THE COURT: I think the Court has acquainted
25 what it envisages as to the sentence; that the charges appear

2 to be separate and that the times are separate. Is that
3 correct, gentlemen?

4 MR. GUTMAN: Yes.

5 MR. PEDOWITZ: Yes.

6 BY THE COURT:

7 Q Mr. Sternlieb, relative to pleading guilty and
8 facing what would be a maximum term of five years plus a
9 fine of \$1,000, have you conferred with your attorney,
10 Mr. Gutman, about pleading guilty?

11 A Yes, sir.

12 Q Are you pleading guilty after having conferred
13 with counsel and upon your own well-considered judgment?

14 A Yes, sir.

15 Q Have any threats of any sort been made to you to
16 induce you to plead guilty?

17 A No, sir.

18 Q Have any promises of any sort been made to you
19 to induce you to plead guilty other than the statement that
20 I made a moment or two ago that I would anticipate that any
21 sentences I would impose would be concurrent? Have any
22 other statements or promises of any sort been made to you to
23 induce you to plead guilty?

24 A No, sir.

25 Q You do this of your own free will?

2 A Yes, sir.

3 Q Are you a user of narcotics?

4 A No, sir.

5 Q You understand full well what you are doing here
6 now, pleading guilty to serious charges?

7 A Yes, sir.

8 Q The Southern District of New York indictment
9 charges "that on or about March 28, 1975 in the Southern
10 District of New York you unlawfully, wilfully and knowingly,
11 having devised a scheme for obtaining money and property by
12 means of false and fraudulent pretenses, representations
13 and promises, caused to be transmitted by means of wire
14 communication in interstate commerce writings, signs,
15 signals and sounds for the purpose of executing such a
16 scheme as alleged to be in violation of Title 18, United
17 States Code, Section 1343."

18 Did you do that?

19 A Yes, sir.

20 Q Would you tell me in detail in your own words
21 what you did.

22 A Well, I called out in Las Vegas and I had then --
23 representing myself as someone, and I had them send money to
24 the bank in my name and I picked up the money, \$1,000.

25 Q You made a phone call?

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A Yes, sir.

3

Q From where did you call?

4

A New York City, sir.

5

Q You called Las Vegas?

6

A Yes, sir.

7

Q To whom did you make that call?

8

A To the bank in Las Vegas.

9

Q Did you have an account in that bank?

10

A No, sir.

11

Q What bank was it? Was that the Bank of Nevada?

12

A Yes, sir, I think -- yes, sir.

13

MR. PEDOWITZ: It is our understanding that that
14 was the Valley National Bank.

15

Q The Valley National Bank?

16

A Yes, sir.

17

Q You called the Valley National Bank and, so I can
18 get the picture, when you made the call what did you say?

19

A I represented myself as someone from a hotel out
20 in Vegas, Caesar's Palace, that I had known out there and I
21 asked them to bank -- transfer money to myself in New York,
22 and I picked up the money.

23

Q And they were supposed to charge that hotel's
24 account?

25

A Right, yes, sir.

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2 Q You didn't have authority to do this?

3 A No, sir.

4 Q The money was in fact wired, was it?

5 A Yes, sir.

6 Q How much?

7 A \$1,000.

8 Q You knew you were not entitled to that money;
9 is that correct?

10 A Yes, sir.

11 Q You received the money and you kept it?

12 A Yes, sir, I gambled.

13 Q The Nevada indictment charges that "From on or
14 about the 2nd day of April 1975, to on or about the 5th day
15 of April 1975, in the State and Federal Judicial District
16 of Nevada, and elsewhere, you devised and intended to
17 devise a scheme and artifice to defraud and to obtain money
18 by means of false and fraudulent pretenses, promises and
19 representations from the Bank of Nevada, Main Branch,
20 Las Vegas, Nevada, well knowing at the time that the pretense
21 promises and representations would be and were false when
22 made, the scheme and artifice so devised and intended to be
23 devised in substance as follows:

24 "It was a part of the scheme and artifice to
25 defraud that on or about the 3rd day of April 1975 a telephone

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2 call was received by Tom Stevens, Operations Officer, Main
3 Branch, Bank of Nevada, at the Bank of Nevada. The caller
4 identified himself as Steve Hyde of Caesar's Palace Hotel,
5 Mr. Steve Hyde actually being the Comptroller at Caesar's
6 Palace Hotel, Las Vegas, Nevada. The caller accurately
7 provided the Caesar's Palace Hotel's checking account
8 number. As a method of identification, the caller told
9 Tom Stevens to inform the Irving Trust Company that
10 Jerome Sternlieb would appear at the Irving Trust Company and
11 properly identify himself, and would use the code that he
12 was William Weinberger's nephew. William Weinberger is the
13 president of Caesar's Palace Hotel, Las Vegas, Nevada.
14 The caller, supposedly Steve Hyde of Caesar's Palace Hotel,
15 then inquired as to the time the \$1,000 would be available
16 at the Irving Trust Company in New York, and was told that
17 the \$1,000 would be available after 3:00 p.m. on April 4,
18 1975."

19 It is alleged that "It was a further part of
20 the scheme and artifice to defraud that on or about the
21 4th day of April 1975 Jerome Sternlieb did cause a wire
22 communication to be made, via Telex, between the Bank of
23 Nevada in Las Vegas, Nevada, and the First National City
24 Bank of New York in New York, New York, that bank being
25 the correspondent bank of the Bank of Nevada, Las Vegas,

Nevada, for the purpose of arranging \$1,000 to be provided to Jerome Sternlieb by the Irving Trust Company and charged to the Bank of Nevada."

The indictment goes on to allege that: "It was a further part of the scheme and artifice to defraud that on or about the 4th day of April 1975, due to the wire communication, via Telex, between the Bank of Nevada and the First National City Bank of New York in New York City," the other bank being in Nevada, "The Irving Trust Company of Manhattan, New York, made available a \$1,000 check to be picked up by Jerome Sternlieb, the said \$1,000 check to be ultimately charged to the account of Caesar's Palace Hotel at the Bank of Nevada, in Las Vegas, Nevada."

It was further alleged that "It was a further part of the scheme and artifice to defraud that on or about the 4th or 5th day of April 1975, Jerome Sternlieb would and did appear at the Irving Trust Company in Manhattan, New York, and identify himself as Jerome Sternlieb, the nephew of William Weinberger, and would receive from the Irving Trust Company a check for \$1,000."

Finally it is alleged that "On or about the 4th day of April 1975 in the State and Federal Judicial District of Nevada, and elsewhere, Jerome Sternlieb, for the purpose of executing the scheme and artifice to defraud and

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2 attempting to do so, did transmit and cause to be transmitted
3 in interstate commerce by means of a wire communication,
4 that is, a Telex, between the Bank of Nevada in Las Vegas,
5 Nevada, and the First National City Bank of New York, in
6 New York, certain signs, signals and sounds; all in violation
7 of Title 18, United States Code, Section 1343."

8 That is what the charge is from the Nevada
9 indictment.

10 Did you do that?

11 A Yes, sir.

12 Q It would appear that this is a similar scheme
13 and plan to the one you carried out relative to the Valley
14 National Bank; is that right?

15 A Yes, sir.

16 Q Where were you when you made this call to the
17 Bank of Nevada?

18 A I was in New York, your Honor. I called there
19 and asked them, representing myself as Mr. Hyde, and asked
20 them to transmit to myself in New York the money. They said
21 they would do it, and then no money changed hands. When I
22 went to the bank they arrested me.

23 Q In other words, on that transaction you were
24 not successful in obtaining any money?

25 A Yes, sir, no money changed hands.

2 Q You tried to but when you got to the bank to
3 obtain the money you were arrested?

4 A Yes, sir.

5 MR. GUTMAN: In fact, on the 5th of April, if
6 you look at paragraph 5 of the Nevada indictment, the second
7 line, it states that Sternlieb was supposed to appear either
8 on the 4th or 5th of April. According to my records, he
9 apparently appeared on the 5th, was arrested and was
10 arraigned before the magistrate in this court on that same
11 day, and that is where I was appointed.

12 THE COURT: So we have what appears to be two
13 separate crimes. I have already indicated, though, that I
14 would sentence it -- I gather one was a successful effort
15 which resulted in the defendant obtaining the \$1,000 from
16 the Valley National Bank, and the other was an attempt,
17 which was frustrated, to obtain the \$1,000 from the Bank of
18 Nevada.

19 I would suggest that these are separate crimes.
20 The fact that the second one was not successful does not,
21 it seems to me, remove it from being a separate criminal act.

22 MR. PEDOWITZ: In terms of similarity and
23 distinction, in the first case it is the government's
24 understanding that Mr. Sternlieb represented himself to
25 be William Weinberger on the phone, and in the second case

he represented himself to be Mr. Hyde.

THE COURT: I think that came through in his allocution.

I would ask you, Mr. Gutman, if you know of any reason why the defendant should not plead guilty to both indictments.

MR. GUTMAN: I do not, your Honor.

THE COURT: Mr. Pedowitz, do you know of any reason why the Court should not accept the defendant's offer to plead guilty to these two indictments?

MR. PEDOWITZ: No, I do not, your Honor.

THE COURT: Do either of you wish that I make any further inquiry of the defendant?

MR. PEDOWITZ: No, your Honor. I think it is thoroughly covered. I would like to point out for the record, however, that we do have statements of Sternlieb which he gave on the day of his arrest which parallel with statements he has given today. He admitted to both offenses

THE COURT: The Court, having inquired of the defendant, finds that the plea to each of the two indictments, the Southern District of New York indictment and the District of Nevada indictment, is knowledgeable, voluntary and has a basis in fact, and contains all the elements of the crimes charged. The plea is therefore accepted.

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2 I would suggest that a presentence report would be
3 appropriate and if you agree, gentlemen, we will proceed to
4 that and then set this matter down for sentencing.

5 MR. GUTMAN: Would your Honor consider, unless
6 the government has any objection, to a sentencing date of
7 December the 5th?

8 THE COURT: Let me hear from the government.

9 MR. PEDOWITZ: I have no objection, your Honor,
10 with the understanding that the bail conditions will remain
11 the same.

12 MR. GUTMAN: Absolutely. I have no objection
13 to that.

14 THE COURT: Since the government doesn't object,
15 I would be agreeable. It is a somewhat longer than normal
16 period, but I don't see any reason why we could not. You
17 want December the 5th?

18 MR. GUTMAN: Sometime in the afternoon.

19 THE COURT: You are really looking ahead.

20 Friday, December 5 at 2:15 p.m. and the
21 courtroom will be 1306.

22 Is there an application to continue the same
23 bail conditions?

24 MR. PEDOWITZ: Yes, your Honor.

25 THE COURT: Any objection?

2 MR. GUTMAN: No objection.

3 For the record, I believe the bail on the
4 Southern District of New York indictment is \$2,500 cash
5 or surety. . . I don't think any bail was set on the Nevada
6 or the Southern District 789 number. I have no objection
7 to the continuation of that bail.

8 THE COURT: I will set the same bail for each
9 of the two indictments. In other words, he has a total
10 bail of \$2,500 on both of the indictments or it could be
11 considered individually set on each; but the total is
12 \$2,500.

13 Is that all right?

14 MR. PEDOWITZ: Yes, your Honor.

15 MR. GUTMAN: Thank you.

16 THE COURT: Mr. Sternlieb, I understand that
17 you are presently in custody. In the event you should be
18 released from custody between now and December 5, I direct
19 that you appear for sentencing before me on Friday,
20 December 5 at 2:15 p.m. in courtroom 1306. In the event
21 you are released on bail and you do not appear you are
22 subject to further and additional penalties beyond the ones
23 which we have discussed this afternoon.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

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2 THE COURT: Anything else, gentlemen?

3 MR. GUTMAN: No. sir. Thank you very much,
4 your Honor.

5 MR. PEDOWITZ: Thank you.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
UNITED STATES OF AMERICA :
:
 versus :
:
JEROME STERNLIEB, : 75 Crim 367
:
 Defendant. : 75 Crim 789
:
-----X

New York, N. Y.
December 5, 1975 - 2:45 p.m.

Before

 HON. ROBERT J. WARD,

 District Judge.

APPEARANCES:

 THOMAS J. CAHILL, Esq.,
 United States Attorney for the Southern District
 of New York
 LAWRENCE B. PEDOWITZ, Esq.,
 Assistant United States Attorney

 JOHN GUTMAN, Esq.,
 Attorney for Defendant

Also Present:

 MR. RON ROGART,
 Probation Officer.

1
2 THE CLERK: United States of America against
3 Jerome Sternlieb.

4 Is the Government ready?

5 MR. PEDOWITZ: Ready for the Government.

6 MR. GUTMAN: I must apologize for being late, your
7 Honor. The laws of nature being what they are, I can't
8 be at two places at once.

9 THE COURT: No, but when you tell me -- and I
10 was ready for you -- that you would be five minutes late,
11 there is no problem. But, as you can see, the courtroom
12 is rather filled with people at this juncture, and we have
13 inconvenienced them.

14 I understand your busy schedule, and I certainly
15 recognize that this was not meant personally, but sometimes
16 it is just a question of where you should best go first, and
17 since I was ready and waiting for you, I think we might have
18 accommodated both yourself and your busy schedule, your
19 client, who is understandably anxious, and Mr. Pedowitz.

20 MR. GUTMAN: Your Honor, if I may at this time,
21 my client, Mr. Sternlieb, has instructed me to ask for a
22 one-week adjournment. As I understand, his grounds are, first,
23 he was not on the court list, so -- the court list being the
24 list at the Metropolitan Correctional Center for preparedness
25 to come to court. If he had been on the list, he could have

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2 notified his family to be in court. They are not here.

3 The second ground: I believe your secretary may
4 have some knowledge of this, as I am informed. The warden,
5 Mr. Taylor, I believe, hand delivered a letter to your
6 chambers or was supposed to hand deliver a letter to your
7 chambers.

8 Let me first say that I have seen the pre-sentence
9 report. I have seen the numerous letters that your Honor
10 has provided me with in chambers earlier today. I did not
11 see a letter from Warden Taylor. I am informed by Mr.
12 Sternlieb that he is very sure that not only was it sent but
13 it was hand delivered, and I believe your secretary may have
14 been called on it.

15 THE COURT: I have a yellow copy of a letter
16 that I found in my chambers from Warden Taylor.

17 MR. GUTMAN: You do?

18 THE COURT: Yes.

19 MR. GUTMAN: That letter I did not see.

20 THE COURT: That was a yellow copy. It was not
21 filed, and to my recollection it was not signed and is
22 probably still on my desk.

23 If you would like, I will send down for it, and
24 I will let you see it. It is a positive letter, indicating
25 that Mr. Sternlieb has been working at the institution and

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2 has made himself quite useful. That is the thrust of the
3 letter.

4 MR. GUTMAN: If I may, for one moment --

5 THE COURT: Surely. As a matter of fact, I think
6 I could probably lay my hands on it rather quickly, because
7 I recall having read it as recently as this morning, when
8 I was again going over the file.

9 If you want to wait a moment, maybe we could get
10 it for you.

11 MR. GUTMAN: Your Honor, I believe, as Mr.
12 Sternlieb states, that as long as he understands that your
13 Honor has seen the letter, he would withdraw his motion for
14 an adjournment, and he does not even want a recess to allow
15 me to see it. He is convinced that if your Honor has seen
16 it, your Honor will make the best use of it.

17 THE COURT: I think it best to get the letter.
18 have seen it, but let me see about getting it.

19 We will have a two-minute recess.

20 (Recess.)

21 THE COURT: Here is the letter to which I had
22 made reference. As I indicated, it was a yellow copy. I
23 do not recall having seen the original.

24 MR. GUTMAN: Your Honor, I have been allowed to
25 see the letter from Mr. Taylor, who is the warden, dated

December 3rd. Thank you.

THE COURT: Do you wish to proceed with the sentence, Mr. Gutman, or do you wish me to consider the application?

MR. GUTMAN: No. I have been instructed by Mr. Sternlieb to have the application for the adjournment withdrawn, and I wish to proceed with the sentence.

THE COURT: Very well.

The Court notes that the defendant, Jerome Sternlieb, and his counsel, Mr. Gutman, are present in court.

Inasmuch as a reasonably substantial period of time has elapsed since the defendant entered his pleas of guilty on September 23, 1975, the Court would ask him at this time if he wishes to change the pleas which he entered on that date to Indictments 75 Criminal 367 and 75 Criminal 789.

THE DEFENDANT: No, sir.

THE COURT: Mr. Gutman, is there any reason you know of why sentence should not be imposed at this time?

MR. GUTMAN: I do not, your Honor.

THE COURT: Mr. Sternlieb, is there any reason you know of why sentence should not be imposed at this time?

THE DEFENDANT: No, sir.

THE COURT: Mr. Gutman, I will ask you if there is anything you wish to say in Mr. Sternlieb's behalf or whether you wish to present any information in mitigation of

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2 punishment. Then, Mr. Sternlieb, I will ask you if there
3 is anything you wish to say in your own behalf or any info
4 ation you wish to present to the Court in mitigation of
5 punishment, and thereafter I shall make inquiry of Mr.
6 Pedowitz to ascertain whether he has any comments or recom
7 mendations he wishes to make.

8 Mr. Gutman?

9 MR. GUTMAN: Your Honor, I don't want to go over
10 the material written in the report insofar as the defendant
11 past is concerned. I think what is necessary at this junct
12 ture is to for a moment look at the defendant's possible
13 future with certainly an eye to the past, but only an eye,
14 not the entire head, so to speak.

15 I have never encountered so many letters by so
16 many officials from the Metropolitan Correctional Center o
17 West Street on behalf of an inmate, ranging from four depu
18 marshals, a letter you have, all the way up to and includi
19 as I recently stated, a letter from the warden, himself, a
20 I daresay Warden Taylor does not lightly consider writing
21 letter for an inmate, nor does he do this for every inmate
22 It must be the rare and the exceptional person for which
23 the warden of an institution would write a letter to a sen-
24 tencing judge.

25 There are letters in there from various people

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2 saying that not only as an inmate did he work well, but
3 he was considered to be paid for his work, and then he was
4 doing so well that they put through a request to have his
5 pay increased a nominal amount.

6 I understand there are letters from people saying
7 "Shouldn't Mr. Sternlieb be on parole or incarcerated and
8 subsequently released? There are possible and probable jobs
9 awaiting him."

10 Certainly, that would go in his favor. Your Honor
11 knows the position that Mr. Sternlieb is in. I think we
12 are dealing now with a matter of, if I can use the term
13 loosely, four jurisdictions. If I might illustrate for the
14 Court, we are dealing with Queens County in New York, which
15 has sentenced Mr. Sternlieb to a period of one and a half
16 to three years in custody. Then we have the jurisdiction
17 of Westchester County, which has sentenced Mr. Sternlieb
18 to one year. Then we have the jurisdiction of the Board of
19 Parole, to which, as I understand, the report refers, to
20 which Mr. Sternlieb owes one year, six months and some
21 nineteen days, if my memory serves me correctly, and the at-
22 tendant requirement that the Westchester County sentence
23 of one year is to run consecutive to the Parole Board's time
24 owed of one year, six months and some nineteen days.

25 So that in toto, what we are really talking about

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2 is a man who has been sentenced for -- I am talking now
3 maximum periods -- three years, one and a half years, to
4 run, I assume, concurrently to the three years, with and
5 year to run consecutive to that three-year period.

6 So what we are actually talking about, I believe
7 is that Mr. Sternlieb might be incarcerated for a maximum
8 period, if I am not mistaken, of somewhere between four
9 five years from the State of New York.

10 On top of it now we come to the Federal jurisdiction,
11 and I am sure your Honor is aware of the fact that
12 the Court can sentence Mr. Sternlieb to a maximum of five
13 years, that being on two counts, but if I remember correctly,
14 your Honor indicated that he would consider concurrently
15 under Rule 20 from Nevada and the count here in New York
16 the time of the plea of guilty, if my memory serves me
17 correctly.

18 What I ask the Court to do is to consider the
19 problem of the addicted gambler. The gambler is as much
20 sick person as if he were an addict, if he were someone with
21 cancer, God forbid. Although you can cure the cancer, it is
22 certainly much harder to cure the addict.

23 I am sure the Court is aware of all the problems
24 that you have with the drug addiction problem and addicts.
25 I place gambling in the same category. I am sorry to say

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2 that the Federal Court does not deal with alcoholism as it
3 does with drug addiction, nor does it deal with gambling as it
4 does with drug addiction. There are numerous programs for
5 drug addicts, but not any that I could find in the Federal
6 system for gambling.

7 I only mention that because your Honor is in
8 possession of two letters, one from a place called New
9 Horizons and the other is a letter from a person called
10 Arnie, who is a Gamblers Anonymous representative, who I
11 believe wrote to you on behalf of Mr. Sternlieb.

12 I ask your Honor to take that into consideration
13 and to consider the Federal Court sentence to run, if a
14 period of incarceration is deemed appropriate by the Court,
15 to run concurrent with what the State has already sentenced
16 Mr. Sternlieb to, as I previously outlined.

17 Before closing, your Honor, I would like to
18 possibly tell you a parable, if I might, for a moment.

19 According to Hebraic tradition and law, the
20 commentaries to the Testaments say that God sits on His
21 throne in the morning and he dispenses justice, but if that
22 is all He would do in the strict sense of justice, He would
23 have to destroy the world. So therefore He sits on His
24 throne in the afternoon and dispenses compassion and mercy.

25 I would like to have the Court note that it is

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2 the afternoon, and I ask you to consider Mr. Sternlieb's
3 background, but also in view of what he can do in the fu

4 Thank you, your Honor.

5 THE COURT: Thank you, Mr. Gutman.

6 Mr. Sternlieb, is there anything you wish to s
7 in your own behalf or any information you wish to presen
8 to the Court in mitigation of punishment?

9 THE DEFENDANT: The only thing I would like to
10 is that I have been in eight months. You've got a letter
11 from Mr. Taylor. I have tried every way possible to try.
12 You know, I have a bad record, but I would just like a
13 chance for the future.

14 That's all I have to say.

15 THE COURT: Mr. Pedowitz?

16 MR. PEDOWITZ: Your Honor, we have nothing to
17 add.

18 THE COURT: The Court is prepared to impose
19 sentence.

20 I have before me a defendant, aged forty-one, w
21 has pled guilty to one count of fraud by wire on an indic
22 ment emanating from this District and one count of fraud
23 by wire on an indictment emanating from the District of
24 Nevada, which was transferred under Rule 20.

25 On each count, the defendant faces a possible
penalty of not more than five years' imprisonment and/or a

fine of not more than \$1,000.

I have reviewed the pre-sentence report previously referred to by Mr. Gutman, and I find here a continuing series of attempts by the defendant to engage in fraudulent activities by which he sought to obtain funds by illegal means. Although the scheme which I read about in the report and which I heard about at the time the plea was taken yielded a relatively small sum, it was the intention of the defendant to obtain considerably more in the way of funds.

What disturbs this Court most is that the defendant putting the arrests aside, has been convicted, by my calculations, approximately fifteen times, and when he stands before me and asks for one more chance, and you, Mr. Gutman, asked me to exercise compassion, I say no. Once can be a mistake; twice, perhaps three times. But this many?

There have been prior custodial sentences imposed in Kings County, imposed by Judge Cannella of this Court, and imposed in Queens County. IN addition, there was another Federal sentence imposed in the Eastern District of New York.

It would appear to the Court that none of these sentences has had a deterrent effect upon curbing Mr. Sternlieb's unlawful activities.

We have, in addition, the matter of his parole

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2 violation, which you made mention of briefly. I suggest
3 this is one of those few occasions in which I can fairly
4 state the recidivism is an almost absolute guarantee, and
5 I would suggest that this Court would fail in its duty to
6 the community and to society were I to permit this defend
7 to go free at this time.

8 I took note of the letter from Warden Taylor.
9 would also note that the defendant has spent some portion
10 of his life in custody, and, being an intelligent man, he
11 knows how to get along. I give him credit in that regard.
12 I give him credit for his intelligence, but I give him no
13 credit for his conduct. A poor man, a stupid man standing
14 before me would have my compassion, but a man who has been
15 in difficulties this many times, a man who is in my judg-
16 ment a bright individual, for whom I can find no excuse,
17 must pay the penalty which the law requires be paid.

18 There appears, in my judgment, to be little hope
19 at this juncture, anyway, that probation and parole super-
20 vision would be helpful. Therefore, I find it necessary
21 to impose a sentence of confinement.

22 There is little else that I can say prior to
23 imposing sentence, but I do repeat: this is one of the rare
24 cases where a sentence is being imposed for what the Court
25 believes to be the protection of society as well as punish

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2 ment for illegal acts committed.

3 This is the sentence of the Court:

4 On Indictment 75 Criminal 367, it is adjudged that
5 the defendant is hereby committed to the custody of the
6 Attorney General or his authorized representative for impris-
7 onment for a term of five years.

8 On Indictment 75 Criminal 789, it is adjudged that
9 the defendant is hereby committed to the custody of the
10 Attorney General or his authorized representative for a
11 term of five years and fined the sum of \$1,000. The execu-
12 tion of the sentence as to imprisonment only is suspended,
13 and the defendant is placed on probation for a period of
14 five years, the term of which shall run consecutively to
15 those State sentences heretofore imposed.

16 The defendant is ordered to stand committed until
17 the fine is paid or he is otherwise discharged by due course
18 of law.

19 That is the sentence of the Court.

20 MR. GUTMAN: Your Honor, is the sentence on 367
21 concurrent with 789, although you suspended the execution
22 of sentence?

23 THE COURT: It is my intention that the sentences
24 be consecutive. I have suspended its execution and placed
25 the defendant on probation, but I say again: the term of

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2 that probation is to run consecutively to those State her
3 fore imposed, so that it is my intention that once the se
4 tence of five years' imprisonment first imposed is comple
5 and once the defendant pays his debt to the State, he wil
6 then begin a five-year period of probation, and in the
7 event he violates probation, that sentence of five years,
8 the execution of which I suspended, will come into play,
9 he will be back here before me for further disposition.

10 MR. GUTMAN: Your Honor, I most respectfully br
11 to your attention the fact that at the time of sentence I
12 believe that you intended or that you had made the statem
13 to the defendant that you would treat Indictment 367 and
14 Indictment 789 concurrently.

15 THE COURT: No. I think I said that I would no
16 sentence him to consecutive periods of confinement. I
17 don't have the record here, but my recollection is that I
18 told him that I would not sentence him to consecutive per
19 of confinement, and I have not. He has received a senter
20 on the second plea. However, I have suspended its execut
21 and placed him on probation so that he is not faced with
22 consecutive terms. He is not faced, if he minds his busi
23 ness well, with any additional time in connection with th
24 'second sentence, and I think that I have carried out my
25 promise and my intention. I would not have carried

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2 it out if I had sentenced him to periods of confinement on
3 both and had them run consecutively. That I had not intended
4 to do, but I do intend that the sentence of probation be
5 consecutive to the other, and I hope that in the interim
6 period he will learn enough to stay out of trouble, and when
7 he gets out he will have five years during which he will be
8 on probation, and if he minds his business and does not get
9 into trouble, his period of probation will expire, and he
10 will do no more time.

11 However, I want him to know, without having
12 suspended imposition of sentence -- I want him to know that
13 in the event he violates that probation, he has a sentence
14 hanging over him which is the maximum the law can provide,
15 and that is what I have done, and I have done it basically
16 because of what I have said. I see a record here which is
17 replete with repetition of similar acts, no lesson learned
18 and no hope that one will be learned. Perhaps in this
19 period of incarceration he will have ample time to think
20 about this serious matter, and at the time he gets out he
21 will be able to re-order his life. I hope so.

22 MR. GUTMAN: One more point, if I might, your
23 Honor: I realize that you said that the probation period
24 is to run consecutive to the State.

25 THE COURT: That is correct.

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2 MR. GUTMAN: Are you intending to say that the
3 five-year commitment term is running concurrent or consecu-
4 tive, or would you consider making that concurrent?

5 THE COURT: My understanding is that he is serving
6 Federal time now.

7 MR. GUTMAN: That is correct.

8 THE COURT: It would seem to me that the State
9 authorities are the ones to whom you should look to have his
10 Federal time run concurrent, but in my view he is serving
11 his Federal time now, which, from the point of view I have
12 where I sit, knowing the Federal prison system as opposed to
13 the other system, is where he would prefer to be.

14 THE DEFENDANT: Yes, sir; but they came out --

15 MR. GUTMAN: That's all right. He is right.

16 THE COURT: The point is, I think the application
17 should be made to the State authorities, indicating he is
18 presently serving his Federal time and requesting them to do
19 what they see fit to do. If they are willing to do it,
20 that's fine with me, and then he will have all of his time
21 served within this five-year period, if they are willing to
22 do that, and it is my intention that when he gets out he
23 knows that he has a problem here if he violates his proba-
24 tion.

25 I have tried to work it in such a way as to provide

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2 for a deterrent and at the same time to live up to the
3 statements which I have made previously, so that if he stays
4 out of trouble once he completes his period of confinement
5 on 75 Crim 367, if he stays out of trouble he should not
6 return to Federal custody.

7 I have tried to do what I think is my obligation
8 and tried to follow up on the statements which I have made
9 previously.

10 Is that clear?

11 MR. GUTMAN: It is clear. Thank you.

12 THE COURT: Good luck to you, sir.

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BUREAU OF PRISONS WASHINGTON, D. C. 20537

Policy Statement

2101.2A
6-25-71

**SUBJECT: COMMITTED FINES FOR INDIGENTS
ABOLISHED**

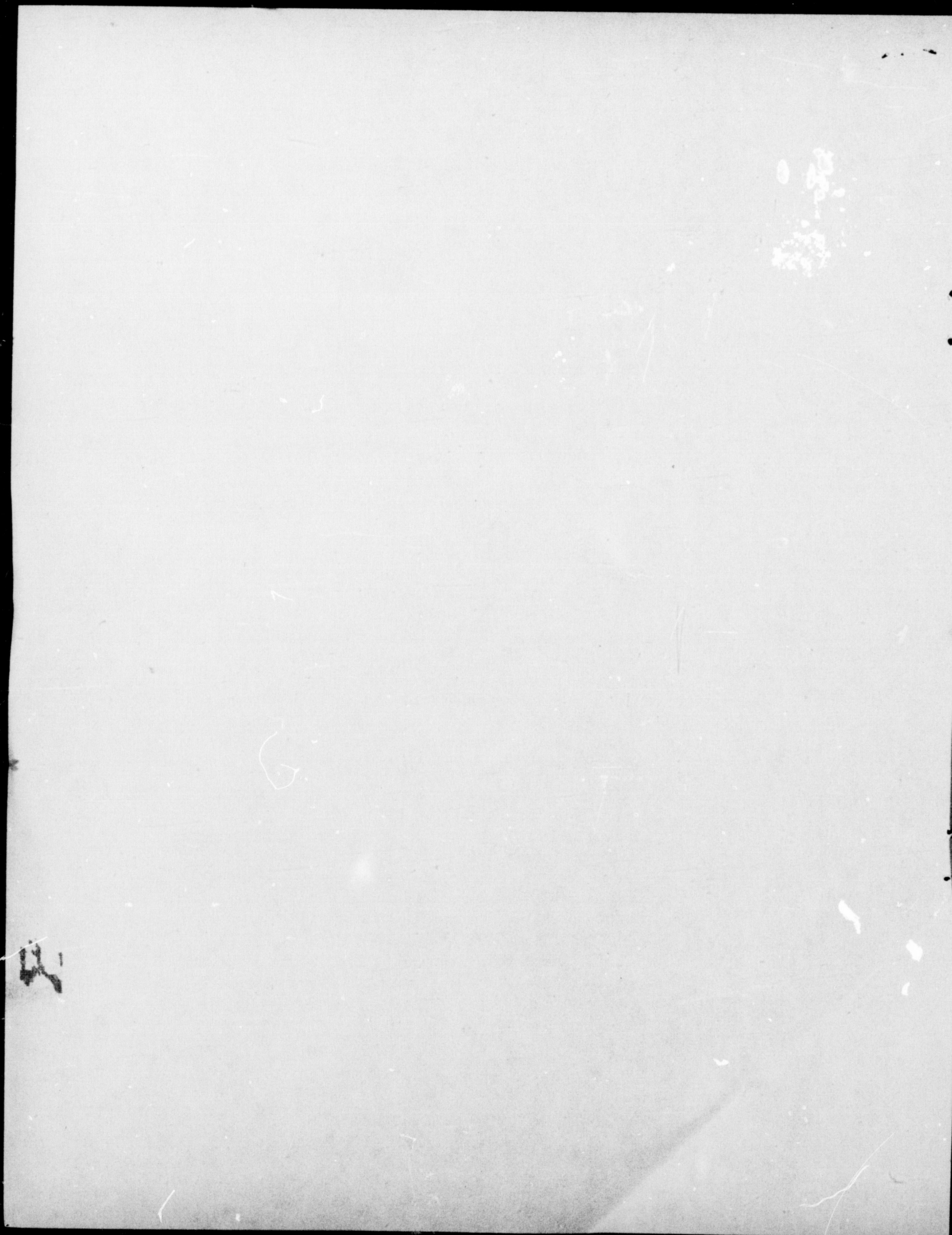
1. **PURPOSE.** To apply to federal prisoners recent Supreme Court decisions pertaining to imprisonment of indigents for non-payment of committed fines. A person sentenced to a term of imprisonment and also given a committed fine can no longer be held beyond his normal release date solely because he is unable to pay his fine because of his indigency.
2. **DIRECTIVE AFFECTED.** Policy Statement 2101.2 is hereby superseded.
3. **EXPLANATION.** In June 1970, the U.S. Supreme Court in *Williams v. Illinois* held that an inmate may not be retained in custody *beyond the maximum period* fixed by statute for his offense solely because of his financial inability to pay the fine. On March 2, 1971, the U.S. Supreme Court in *Tate v. Short* extended the *Williams* decision by holding that a person may not be held in confinement solely because he is unable to pay the fine because of his indigency. The effect of *Tate* is to remove the requirement of *Williams* that the maximum confinement be imposed. Thus any conversion of a fine to imprisonment in a case where the person is indigent is prohibited. The effect is that 18 U.S.C. 3569, which provides that a person who cannot pay his committed fine may be held for 30 days beyond his release, is invalid if he can take a pauper's oath on his release date. The committed fine can still be used as a basis to retain an inmate in

custody beyond the release date, if the inmate has resources but refuses to pay his fine.

4. ACTION

- a. If an inmate serving a sentence of imprisonment cannot, because of poverty, pay a committed fine which has been imposed as a part of his sentence, he cannot be held beyond his release date solely for non-payment of the fine.
- b. Whenever such a person reaches his release date, whether by parole, mandatory release, or full-term expiration, he shall be released on the regularly scheduled date and shall not be held further for any non-payment of a committed fine.
- c. In order to substantiate the indigency status of the inmate, the Warden or his designated representative shall take a sworn statement from the inmate in the following form: "I do solemnly swear that I have no property, real or personal, with which I can pay the fine imposed on me, except property which is by law exempt from being taken on civil process for debt. I have no property in any way conveyed or concealed to avoid payment of this fine, or in any way disposed of for my future use or benefit."
- d. The United States Attorney for the District where the inmate was sentenced should be notified approximately 30 days in advance of the release, and given a copy of the sworn statement of indigency. The United States Attorney should be advised that no commitment for non-payment pursuant to 18 U.S.C. 3569 will be carried out in view of the Supreme Court's ruling in the *Williams* and *Tate* cases. A copy of that notification to the United States Attorney should be sent to the Office of General Counsel of the Bureau.

NORMAN A. CARLSON
Director



Certificate of Service

Jan 21 , 1976

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

Shirley G. Gosteny